

June 9th, 2023

The Honorable Valerie E. Caproni
United States District Court Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Frank DiTomasso, Case No. 14-cr-160 (VEC)

Dear Honorable Caproni:

I am writing to you regarding my nephew Frank DiTomasso, to request a re-opening of Frank's case. I would also ask that you take all I need to present to you into consideration before making a final decision.

Frank lost his original appeal and recently his request for a Certificate of Appealability was denied. In part because of the lie from Lee Ginsberg.

When I heard audio of the original appeal proceedings, it was mentioned by the prosecutor that Lee Ginsberg told them in his statement that I informed him of my sole involvement in the case after the trial. One of the appeals judges agreed that he had read that.

However, this is a lie. Before the trial even started I confided to Lee Ginsberg about my sole involvement and when we were in the courtroom for a pre-trial hearing, he spoke with the prosecutor about my being a possible witness. She proceeded to call the clerk's office to have them assign me an attorney.

As I state in my Affidavit, Jeremy Schneider was my first attorney. He kept refusing to help me do anything—especially after speaking with Lee Ginsberg, and so I asked for a new attorney. Adam Perlmutter was then assigned. He also refused to help me and again especially after speaking with Lee Ginsberg. I have enclosed a copy of an email I received from Adam Perlmutter dated 6/2/2016. Even though this was after the trial, it proves that he had spoken to Lee Ginsberg about my involvement before the trial began—as both attorneys were assigned to me pre-trial and both spoke at length with Lee Ginsberg. I have also enclosed another copy of my Affidavit.

I had asked the appeals court and I am asking --pleading-- with you to please speak with Jeremy Schneider and Adam Perlmutter. If necessary, I give the court my complete permission to speak with them. It is the only way to get justice for Frankie.

I respectfully ask for your consideration in this matter.

Thank you,

Robert Marcus
2252 1st Avenue 3A
New York, NY 10029
646-271-7850

June 2nd, 2016

Robert:

I did not receive your earlier communication. I think that the only reason Lee would consider me an idiot as an attorney is because I have given you any attention on this matter. What you proposed to do in your nephew's case would have done nothing to help him. It would have only resulted in your being charged with criminal offenses as well. You've gotten the same opinion from two attorneys, and the fact that I would actually take a close look to question those prior, well founded opinions is admittedly idiotic under the circumstances.

I stand by the advice that you have now gotten from the two other attorneys. I also believe that there is a very small chance, pretty much zero, that your nephew will get a new trial. Whatever the case may be, your relatives are more than welcome to contact me if I can be of any assistance.

Finally, I had more than enough time to review the material that the government had marked ~~re~~ exhibits for your nephew's trial -- a fools errand to say the least. I will send you a separate email with photographs of the materials that I found most pertinent to the issue of establishing his guilt.

Very truly yours,

Adam D. Perlmutter
Perlmutter & McGuinness, P.C.
260 Madison Avenue, Suite 1800
New York, NY 10016 (at 39th St.)
Telephone: (646) 742-9800

AFFIDAVIT OF ROBERT MARCUS

March 1st, 2023

My name is Robert Marcus and I am sending this Affidavit because I need to right a wrong. I must do what must be done.

My nephew, Frank DiTomasso, is an innocent man, in prison for something that I did. He is in prison on child pornography charges that he had nothing to do with and what follows is what actually happened.

I have an apartment at 2252 1st Avenue Apt. 3A in Manhattan that Frank was staying at and I would often stay as well since the apartment was in my name. I had keys to the apartment and would come and go whenever I wanted and would often stay overnight as well.

One day I came across a flash drive in the apartment that had Frank's head shots for his acting career. It also had a video on it of Frank in the nude that he had made for a girlfriend he had been seeing about 3 years earlier. I started going on video chat websites that pair you with random people and noticed that many times the other person was a pre-recorded video and not a live person. I started using Frank's video that I had made a copy of in a laptop that I used to video chat with others. Frank is quite younger than I am and in the video he was in very good physical shape and I thought he would be more appealing to girls that I tried to chat with.

My action spiraled out of control to the point of viewing child pornography and then using Frank's video along with the child pornography together in a split screen to video chat. I used a website call Omegle where I met a 13-year-old girl from Florida and began chatting with her through Skype. I used Frank's physical traits in a description to match what he looked like in the video. The girl never knew it was me. I edited and looped the video to make it longer and it appeared it was Frank typing, etc. I also used an e-mail account frankieinnyc1@aol.com. Frank had his own account at Yahoo, but I did not use this account.

I had tried to use Omegle and Skype through his Xbox360, but it never worked and all I got were error messages, so I would only use my laptop. I never instructed this 13-year-old girl to use any foreign objects to masturbate with nor did I ever chat about Dropbox, however, I did chat with the girl, I did use Frank's video, and I did use a peer to peer file sharing site to download child pornography—all from my laptop and from no other device. The laptop was only in the apartment when I was there and when I would leave, I always took it with me. Frank never did and was never able or allowed to use it. It was the only device in the apartment that could do any of the things Frank was charged with, and I was the only person who had access to it. I feel ashamed and horrible for my actions that have put my nephew in Federal Prison, and I am coming forward to correct a grave injustice, finally admit my guilt prove Frank's innocence, and make things right.

AFFIDAVIT OF ROBERT MARCUS

March 1st, 2023

I did speak with both attorneys who represented Frankie, but to no avail. Not long after Frankie was arrested I spoke with his first attorney, Robert Baum of the Federal Defenders Office, but he refused to help.

Then for his own reasons, Frankie asked the court for a new attorney and they appointed Lee Ginsberg. Long before the trial I spoke with Lee about the same issue—that I was solely responsible for everything and not Frankie. He refused to help. When I pressed the issue, one day while we were in court for some hearing for Frankie's case—he spoke with the prosecutor telling her that I may be a witness. At Lee's request, she asked the court to provide me with an attorney, but Lee refused to even ask me to sign an affidavit, which Frankie had asked him to do. Frankie also asked Lee to call me as a witness, which he also refused to do.

In a phone conversation Frankie had with Lee from MDC Brooklyn, Lee told Frankie, "The worst thing that Robert can do is say he's going to come forward and then doesn't." Lee then told Frankie, "It won't make a difference." Lee then said, "I don't know if Robert would be willing to do jail time." Lee then went back to, "It won't make a difference." Then days before Frankie's trial Lee told Frankie at MCC, "If Robert is going to come forward now is the time." Lee also told Frankie that Frankie could put this entire conversation in writing.

I met with Attorney Jeremy Schneider in 2015, before Frankie's trial. After meeting with him several times I did not feel he was being helpful. I explained to him that I was solely responsible for what happened, but after he spoke with Lee Ginsberg he refused to help me saying it was better for me not to say anything. I was not happy with his lack of help and asked if I could have a new attorney. Mr. Schneider was all too happy to help me in removing himself as my attorney and in having a new attorney appointed. I then met with Attorney Adam Perlmutter. Once again I went over everything with Mr. Perlmutter, and once again explained how I was solely responsible for everything and that Frankie had nothing to do with any of this. After he spoke with Lee Ginsberg about the case, however, his response was the same as Mr. Schneider's, not to say anything and he refused to help me.

I had a tough time deciding what to do as the trial date approached. Frankie went to trial in March of 2016. However, in January of 2016 I was diagnosed with colon cancer and awaiting surgery to remove the cancer. I was afraid that if I had the surgery before the trial I would not be there for Frankie, but at the same time I was afraid for my life if I said something during the trial and was not able to have surgery when it was necessary.

Each time I spoke with Lee about my sole involvement in the case he would say he didn't believe me, nor did he feel the jury would believe me. He said the prosecutor would seek to convict both of us. However, when he was in court with Frankie, I could not know or hear what he was saying to Frankie. At the beginning of the trial Lee looked at Frankie with a smirk and said "Is Robert going to come forward?" He never told Frankie what he told me—that he did not believe me, that the jury would not believe me, and that the prosecutor would want both of us in jail.

AFFIDAVIT OF ROBERT MARCUS

March 1st, 2023

The only attorney who listened to me was Lori Cohen who handled Frankie's appeal. However, the appeal was denied in part because Lee Ginsberg lied to the court when he told them that I had never really confessed to the crime. That is a lie because that is just what I did do. I confessed to Lee Ginsberg that I was solely responsible.

Again I feel ashamed and horrible for my actions that have put my nephew in Federal Prison, and I am coming forward to correct this grave injustice, admit my guilt, prove Frank's innocence and make things right.

Thank you,

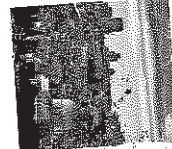


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Cindy Estrada
Notary Public, State of New York
No. 01ES6085043
Qualified in Bronx County
Commission Expires December 16, 2028
March 1, 2023 Cindy Estrada

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